

New Jersey Commissioner of Education**Final Decision**

Salvatore Piarulli,

Petitioner,

v.

Board of Education of the Borough of Garwood,
Union County,

Respondent.

Synopsis

In this case filed June 6, 2023, petitioner – a member of the Garwood Board of Education (Garwood or Garwood BOE) – sought indemnification from respondent for attorney fees and costs which he incurred in relation to a contested case, Board of Education of the Borough of Garwood, Union County v. Salvatore Piarulli, EDU 01176-23, filed February 7, 2023, wherein Garwood sought a ruling that petitioner was disqualified from serving on the Garwood BOE because he had filed a Notice of Tort Claim against Garwood and thereby incurred a conflict of interest. The tort claim followed a vote by Garwood to remove petitioner as its Sending District Representative (SDR) to the Clark Board of Education and included a demand for \$10 million dollars in damages based on an allegation that he was slandered and libeled as the result of his removal as SDR. In the instant matter, petitioner sought legal fees and costs of \$22,874.60 as indemnity pursuant to *N.J.S.A. 18A:12-20*, as well as interest and additional costs and fees as permitted by law, all related to his tort claim against the Garwood BOE. Garwood filed a motion to dismiss, contending that the petition failed to advance a cause of action that demonstrated entitlement to indemnification under *N.J.S.A. 18A:12-20*.

The ALJ found, *inter alia*, that: petitioner’s position that he is entitled to indemnification pursuant to *N.J.S.A. 18A:12-20* for expenditure of money for his attorney fees and costs because he was primarily acting in the public interest when he filed his Notice of Tort Claim and when he was “defending” himself in the course of executing his Board duties when Garwood filed suit to disqualify him as a member is without merit; *N.J.S.A. 18A:12-20* only obligates a board of education to defray costs incurred by a member when he or she is defending against a lawsuit or action brought by others for an act or omission undertaken in the course of performing his or her official duties as a Board member; petitioner’s filing of his tort claim initiated an action against the Garwood BOE; and petitioner’s tort claim advanced a cause of action for his own monetary benefit, which was in conflict with his duties as a Board member. The ALJ concluded that petitioner is not entitled to be indemnified for his attorneys’ fees and costs based on *N.J.S.A. 18A:12-20* or on any other basis. Accordingly, the ALJ dismissed the petition with prejudice.

Upon review, the Commissioner concurred with the ALJ that petitioner is not entitled to indemnification from the Garwood BOE. Accordingly, the Initial Decision was adopted as the final decision in this matter, and the petition was dismissed with prejudice.

This synopsis is not part of the Commissioner’s decision. It has been prepared for the convenience of the reader. It has been neither reviewed nor approved by the Commissioner.

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OAL Dkt. No. EDU 05656-23

Agency Dkt. No. 158-6/23

New Jersey Commissioner of Education

Final Decision

Salvatore Piarulli,

Petitioner,

v.

Board of Education of the Borough of
Garwood, Union County,

Respondent.

The record of this matter and the Initial Decision of the Office of Administrative Law (OAL) have been reviewed and considered. The parties did not file exceptions.

Upon review, the Commissioner concurs with the Administrative Law Judge that petitioner is not entitled to indemnification from the Garwood Board of Education.

Accordingly, the Initial Decision is adopted as the final decision in this matter, and the petition of appeal is hereby dismissed with prejudice.

IT IS SO ORDERED.¹


ANGELINA ALLEN McMILLAN, J.D.
ACTING COMMISSIONER OF EDUCATION

Date of Decision: January 23, 2024

Date of Mailing: January 25, 2024

¹ This decision may be appealed to the Appellate Division of the Superior Court pursuant to *N.J.S.A. 18A:6-9.1*. Under *N.J.Ct.R. 2:4-1(b)*, a notice of appeal must be filed with the Appellate Division within 45 days from the date of mailing of this decision.



State of New Jersey
OFFICE OF ADMINISTRATIVE LAW

INITIAL DECISION

OAL DKT. NO. EDU 05656-23

AGENCY REF. NO.:158-6/23

SALVATORE PIARULLI,

Petitioner,

vs.

**GARWOOD BOARD OF
EDUCATION, UNION COUNTY,**

Respondent.

Ronald A. Berutti, Esq., for petitioner (Murray-Nolan, Berutti, LLC, attorneys)

Robert E. Levy, Esq. for respondent (Scarinci & Hollenbeck, attorneys)

Record Closed: September 14, 2023

Decided: December 21, 2023

BEFORE: **JOHN P. SCOLLO, ALJ:**

STATEMENT OF THE CASE

In EDU 05656-23, the parties are the Garwood Board of Education (hereinafter, “Garwood”, the “BOE”, or “Garwood BOE”) and Salvatore Piarulli (hereinafter “Piarulli”), a member. In his Petition, filed on June 6, 2023 with the Commissioner of Education, Piarulli seeks indemnification from Garwood BOE for attorneys’ fees and costs, which he incurred in the matter of EDU 01176-23. On June 23, 2023, Garwood BOE filed its Motion to Dismiss this Petition. On June 26, 2023, the Commissioner transmitted this matter to the Office of Administrative Law, where it was filed on June 26, 2023 as a

contested case pursuant to N.J.S.A. 52:14B-1 to -15 and N.J.S.A. 52:14F-1 to 13 and assigned Docket Number EDU 05656-23.

Piarulli's June 6, 2023 Petition is in one count (Indemnification) specifically seeking the following relief: (1) legal fees and costs of \$22,874.60 as indemnity, pursuant to N.J.S.A. 18A:12-20; (2) interest as allowed by law; (3) reasonable legal fees and cost for this Petition; and (4) such other further and reasonable relief as may be permitted by law. In its June 23, 2023 Motion to Dismiss, the BOE seeks: (1) an Order Dismissing the June 6, 2023 Petition with Prejudice, arguing that Piarulli's Petition fails to advance a cause of action demonstrating entitlement to indemnification under N.J.S.A. 18A:12-20; (2) reasonable attorney fees and costs of suit; and (3) such other relief as may be appropriate.

PROCEDURAL HISTORY

History of EDU 01176-23

The Department of Education's Office of Controversies and Disputes, on February 7, 2023 transmitted a matter filed by Garwood BOE to the Office of Administrative Law. It was filed on February 7, 2023 as a contested case. It was captioned Board of Education of the Borough of Garwood, Union County v. Salvatore Piarulli and it was given OAL Docket Number EDU 01176-23. In EDU 01176-23, Garwood BOE sought a ruling that Piarulli was disqualified from serving on the BOE because he filed a Notice of Tort Claim against the BOE on January 11, 2023 and thereby incurred a conflict of interest. On February 9, 2023, EDU 01176-23 was assigned to John P. Scollo, ALJ. During a teleconference held before Judge Scollo on February 13, 2023, the parties mutually agreed as follows: Piarulli withdrew his January 11, 2023 Notice of Tort Claim in exchange for the BOE withdrawing its February 7, 2023 petition in EDU 01176-23. As a result of the February 13, 2023 teleconference, Judge Scollo issued a February 14, 2023 Letter Order.

History of EDU 01274-23

On January 24, 2023, Piarulli filed a Petition to the Commissioner of Education seeking to reverse Garwood BOE's October 18, 2022 vote to remove him as Garwood's Sending District Representative and seeking other relief. On February 8, 2023, the Commissioner transmitted this Petition to the Office of Administrative Law where it was filed on February 8, 2023 and given OAL Docket Number EDU 01274-23. On February 9, 2023, EDU 01274-23 was assigned to Judge Scollo. On February 10, 2023, Garwood BOE filed a Motion to Dismiss Piarulli's January 21, 2023 Petition.

As noted above, on February 9, 2023 EDU 01176-23 and EDU 01274-23 were both assigned to John P. Scollo, ALJ. As noted above, during the February 13, 2023 teleconference, EDU 01176-23 and Piarulli's January 11, 2023 Notice of Tort Claim were mutually withdrawn.

In EDU 01274-23, Judge Scollo granted the BOE's Motion to Dismiss, ruling that the Petition which Piarulli filed with the Commissioner of Education on January 24, 2023 was filed beyond the 90-day time limit allowed by N.J.A.C. 6A:3-1.3 and therefore was time-barred. Judge Scollo also ruled that Garwood BOE had the authority to appoint or to remove any board member to / from the position of Sending District Representative, and therefore its vote on October 18, 2022 to replace Piarulli as SDR was done within its authority under N.J.S.A. 18A:11-1(d).

The History of EDU 05656-23

The matter presently before the Tribunal is EDU 05656-23. On June 6, 2023, Piarulli filed a Petition with the Commissioner of Education seeking to be indemnified by Garwood BOE for attorneys' fees and costs, which he incurred in the matter of EDU 01176-23. Garwood BOE filed a Motion to Dismiss on June 23, 2023. The Commissioner transmitted the matter to the Office of Administrative Law, where it was filed on June 26, 2023. The matter was captioned Salvatore Piarulli v. Board of Education of the Borough of Garwood, Union County and given OAL Docket Number EDU 05656-23.

This writing is Judge Scollo's Initial Decision on Piarulli's claim for indemnification and for other claims presented in EDU 05656-23.

ANALYSIS OF THE PARTIES' ARGUMENTS

Piarulli's Position

It is Piarulli's position that he is entitled to indemnification from Garwood BOE pursuant to N.J.S.A. 18A:12-20 for the expenditure of money for his attorneys' fees and costs because he was primarily acting in the public interest when he filed his Notice of Tort Claim on January 11, 2023 and when he was "defending" himself in the course of executing his Board duties when the BOE filed EDU 01176-23.

Piarulli urges us to read Judge Ciarrocca's February 2, 2023 Order. Judge Ciarrocca's February 2, 2023 Order dissolved the temporary restraints put in place by Judge Walsh's January 20, 2023 Order and dismissed Garwood's Complaint without prejudice in order for the Commissioner of Education to administratively decide the merits of the matter. Piarulli argues that Judge Ciarrocca's February 2, 2023 Order means that he was a prevailing party and thus is entitled to an award of attorneys' fees and costs pursuant to N.J.S.A. 18A:12-20.

Piarulli also argues that the mutual dismissal entered into by the parties on February 13, 2023 during the teleconference with Judge Scollo should be considered as "concluded in Mr. Piarulli's favor", this entitling him to recover attorneys' fees and costs pursuant to N.J.S.A. 18A:12-20.

Garwood BOE's Position

The essence of Garwood BOE's argument is that Piarulli, under N.J.S.A.18A:12-20, is not entitled to indemnification for bringing a personal causation against the Board on which he serves. Rather, a Board member is only entitled to seek indemnification in circumstances where he is defending himself against a lawsuit or other action which

arises out of his actions performed or omissions made while in the course of the performance of his duties as a Board member.

Aside from the explicit wording of N.J.S.A.18A:12-20, Garwood BOE reasons that the purpose of N.J.S.A. 18A:12-20's indemnification provisions is found in the statement accompanying the initial adoption of the statute. Garwood quotes from the statement as follows:

“The purpose of this bill is to give *protection* to every person holding office, position or employment under the jurisdiction of the board of education from financial loss arising from alleged negligence or other act or happening in the discharge of his duties and within the scope of his employment.”

Garwood argues that in the above-quoted section, the word “protection” clearly refers to indemnification for the *defense* of an action brought against a Board member. Garwood argues that the word “protection” clearly does not refer to not indemnification being afforded to a Board member brought for *initiating an action against his own Board*.

Garwood also argues that indemnification is only available, under N.J.S.A.18A:12-20, when a Board member has been sued or otherwise brought into an action when the actions for which he has been sued arise out of or in the course of the performance of his duties as a member of the Board. Garwood BOE argues that the filing of a Notice of Tort Claim in which Piarulli sought money damages was not an action that could in any way be classified as something that arose out of and in the course of the performance of his duties as a member of the Board. That is to say, he was not acting in his official capacity as a member of the Board. Quite to the contrary, by filing the Notice of Claim, he created a conflict of interest under N.J.S.A.18A:12-2 by becoming interested in a claim for money damages against the Board. Moreover, his contesting of the BOE's Petition (EDU 01176-23) was in furtherance of his own claim for money damages and not in furtherance of his duties as a Board member.

FACTUAL DISCUSSION

Issues of Fact

The factual analysis of the parties' positions in this matter requires an exposition (in the form of questions) of the factual issues presented. Some of the factual questions presented in this matter are as follows:

(1) Is there a fee-shifting statute available to Piarulli, which (a) permits an award of attorneys' fees and costs for Piarulli's filing of a Notice of Tort Claim against Garwood BOE; (b) which permits an award of attorneys' fees and costs for defending against Garwood BOE's Petition filed under EDU 01176-23; and, (c) which permits an award of attorneys' fees and costs for bringing this present action filed under EDU 05656-23 against Garwood BOE?

(2) Is there a court rule available to Pirulli, which permits an award of attorneys' fees and costs for the same set of questions presented in sections (a), (b) and (c) of Question One?

(3) Is there a Common Law exception involving a fiduciary's breach of his fiduciary duties available to Piarulli, which permits an award of attorneys' fees and costs for the same set of questions presented in sections (a), (b) and (c) of Question One?

(4) Is there a contract between Piarulli and Garwood BOE, which permits an award of attorneys' fees and costs for the same set of questions presented in sections (a), (b) and (c) of Question One?

The answers to these and other questions are set forth below in the Tribunal's FINDINGS OF FACT.

Chronology of Background Information

The chronology set forth below is taken from Judge Scollo's Initial Decision dated July 24, 2023 in the matter of EDU 01274-23. It is not a verbatim account, but it sets forth events, which the Tribunal deemed particularly significant. The Tribunal included this chronology herein to help the reader understand the background of this matter.

November, 2021 and January, 2022

Piarulli was elected to the Garwood BOE in the November, 2021 election. He was sworn-in in January, 2022. At the BOE's reorganization meeting, the BOE appointed him as Garwood's Sending District Representative to the BOE of Clark pursuant to N.J.S.A. 18A:38-8.1 and 8.2. Clark is where Garwood sends its high school students. Garwood will be referred to as a "sending district" and Clark will be referred to as a "receiving district".

October 18, 2022

On October 18, 2022, Garwood BOE voted in favor of a resolution to replace Piarulli as its SDR to the Clark BOE with another board member. Piarulli contends that this was the result of defamatory statements and retaliation by the BOE's president, whom he claims is a "political rival".

It should be noted that N.J.A.C.. 6A:3-1.3 (i) sets forth a 90-day time limit for the filing of a Petition with the Office of the Commissioner of Education, wherein a Petitioner seeks relief from an action taken by a board of education. Thus, if Piarulli wanted to contest the BOE's October 18, 2022 action that removed him from the position of SDR, the 90-day limit for filing a Petition, as measured from October 18, 2022, would expire on January 16, 2023.

January 11, 2023

On January 11, 2023, Piarulli filed a Notice of Tort Claim in which he sought monetary and non-monetary relief from Garwood BOE.

January 16, 2023, January 20, 2023 and January 24, 2023

January 16, 2023 marked ninety days from the date (October 18, 2022) that the Garwood BOE voted to replace Piarulli as the SDR to the Clark BOE.

On January 20, 2023, the Garwood BOE filed a Verified Complaint and Order to Show Cause in the Superior Court seeking to prevent Piarulli from serving on the Garwood BOE in any capacity, i.e., to remove Piarulli from membership on the Garwood BOE. The BOE's reason for filing these papers was that Piarulli's filing of the Notice of Tort Claim on January 11, 2023 put him into a conflict of interest with his BOE obligations and thus mandated either his resignation from the BOE or his removal from the BOE pursuant to N.J.S.A. 18A:12-2. N.J.S.A. 18A:12-2 is entitled "Inconsistent Interests or Office Prohibited". It encompasses situations where a board member may have a conflict of interest. Garwood BOE contends that it was required by N.J.S.A. 18A:12-2 to take immediate action. Both sides agree that the text of N.J.S.A. 18A:12-2 states that no member of a Board of Education may serve or continue to serve on a BOE if he has a direct or indirect interest in a claim against the BOE. Thus, Garwood BOE contends that Piarulli refused to resign and that its filing of the January 20, 2023 Verified Complaint and Order to Show Cause was a necessity required by the law and was not a tortious act.

On January 20, 2023, Judge Thomas Walsh granted the BOE's application for relief, issuing a Temporary Restraining Order against Piarulli, with the provision that Piarulli could move to vacate the restraints on two days' notice.

On January 24, 2023, Piarulli filed his Petition with the Commissioner in which he sought to overturn the resolution of October 18, 2022. January 24th was eight days beyond January 16th. This was later transmitted to the OAL and assigned Docket Number EDU 01274-23.

Piarulli admitted that he filed the Notice of Tort Claim on January 11, 2023 in which he sought non-monetary relief and money damages from the BOE. While Piarulli admitted that his \$10,000,000 claim does indeed say that he seeks monetary compensation from Garwood BOE, he claimed that the \$10,000,000 figure was a mere placeholder on a form and that his primary reason for filing the Notice of Claim was to protect the public's interest in having its duly-elected BOE member continue to serve in a capacity to which he was appointed by the BOE (i.e., serving as the BOE's SDR).

January 24, 2023

On January 24, 2023, Piarulli, in addition to filing a Petition with the Commissioner of Education, undertook another action. Responding to Garwood BOE's Verified Complaint and Order to Show Cause, Piarulli filed his own Verified Complaint and Order to Show Cause in Superior Court, Union County, Chancery Division alleging that the BOE's actions were illegal; seeking to vacate the January 20, 2023 Temporary Restraining Order issued by Judge Walsh; and seeking a dismissal of Garwood's Verified Complaint.

February 2, 2023

On February 2, 2023, Mark P. Ciarrocca,, P.J. Cv., Union County Superior Court, observing that neither N.J.S.A. 18A:6-9 nor N.J.S.A. 18A:12-2 state that the Commissioner of Education has the exclusive jurisdiction [to decide the controversy], decided that an administrative remedy was nevertheless available. Judge Ciarrocca therefore dissolved the temporary restraints set forth in Judge Walsh's January 20, 2023 Order and dismissed Garwood BOE's Verified Complaint without prejudice, so that the Commissioner of Education would review and decide the matter pursuant to N.J.S.A. 18A-6-9.

As noted above, the matter (EDU 01274-23) was transmitted to the OAL and was ultimately decided in Judge Scollo's Initial Decision dated July 24, 2023.

The above-stated timeline of events and the recitation of certain facts is consistent with the parties' prior submissions.

FINDINGS OF FACT

Having considered the arguments of the parties, set forth above, as well as the background of this matter, I hereby make the following **FINDINGS OF FACT**.

From a plain reading of Judge Ciarrocca's February 2, 2023 Order, I **FIND** that he merely dissolved the temporary restraints contained in Judge Walsh's January 20,

2023 Order, and I **FIND** that he merely dismissed Garwood's Complaint *without prejudice* so that the merits of the Complaint could be decided administratively by the Commissioner of Education. I **FIND** that the rulings contained in Judge Ciarocca's February 2, 2023 Order do not state that the matter has been "concluded in Piarulli's favor". I **FIND** that the rulings do not declare Piarulli to be "the prevailing party", nor do they characterize Piarulli as "winning" or "prevailing" in the matter.

I **FIND** that that during the February 13, 2023 teleconference the parties mutually agreed that in exchange for Piarulli's withdrawal of his January 11, 2023 Notice of Tort Claim, Garwood BOE dismissed its February 7, 2023 Petition filed under OAL Docket Number EDU 01176-23. I **FIND** that during the February 13, 2023 teleconference, neither Piarulli nor Garwood BOE made any reservation of rights to continue to seek attorneys' fees and / or costs from each other. I **FIND** that the parties' mutual exchange, Piarulli's withdrawal of his Notice of Tort Claim in exchange for the BOE's dismissal of EDU 01176-23, was the parties' complete and final expression of their desire to end all issues related to the filing of the Notice of Tort Claim and the filing of EDU 01176-23.

From a reading of the applicable statute, I **FIND** that N.J.S.A.18A:12-20 only obligates a Board of Education to defray all costs incurred by a member when he is *defending himself* against a lawsuit or action brought against him by others for an act he does or for an omission he makes while he is in the course of the performance of his duties as a Board member. I **FIND** that when Piarulli filed his Notice of Tort Claim he initiated an action that was against the BOE. I further **FIND** that Piarulli's filing of a Notice of Tort Claim was not an action undertaken in his own defense as a member of the Board who was acting in furtherance of the performance of his duties as a Board member. I further **FIND** that when Piarulli filed his Notice of Tort Claim, he was advancing a cause of action for his own monetary benefit, which, under N.J.S.A.18A:12-2 was in conflict with his duties as a Board member. I further **FIND** that when Piarulli contested Garwood BOE's Petition (filed under Docket Number EDU 01176-23), he was not *defending* against an action initiated by others against him as a member of the Board acting in the course of the performance of his duties, but instead was acting in furtherance of his own claim against Garwood BOE.

Having considered the above-stated Questions One through Four, I make the following Findings of Fact. I have found that since Piarulli was not defending an action initiated by others against him as a board member acting in the furtherance of the performance of his duties as a Board member, N.J.S.A 18A:12-20 does not afford Piarulli a right to seek indemnification from Garwood BOE in this matter. I **FIND** that there was no fee-shifting statute applicable under the circumstances presented. I **FIND** that the filing of a Notice of Tort Claim does not give rise to an enforceable claim for an award of attorney fees by virtue of any Court Rule. I **FIND** that there was no breach of any fiduciary duty under the circumstances presented for which attorneys' fees and / or costs could be sought. I **FIND** that there was no contract between Piarulli and Garwood BOE that provided for the recovery of attorney fees for breach thereof.

APPLICABLE LAW

Indemnity of Members of Boards of Education Against Cost of Defense of Civil and Criminal Action

N.J.S.A. 18A:12-20 governs the indemnification of board of education members against the expenses and costs of their defense when lawsuits or other legal proceedings are brought against them in their capacity as board members acting in the course of their duties.

N.J.S.A. 18A:12-20 states:

Whenever a civil, administrative, criminal, or quasi-criminal action or other legal proceeding has been or shall be brought against any person for any act or omission arising out of and in the course of the performance of his duties as a member of a board of education, and in the case of a criminal or quasi-criminal action such action results in final disposition in favor of such person, the board of education shall defray all costs of defending such action, including reasonable counsel fees and expenses, together with costs of appeal, if any, and shall save harmless and protect such person from any financial loss resulting therefrom. Indemnification for exemplary or punitive damages shall not be mandated and shall be governed by the standards and procedures set forth in **N.J.S.A.** 59:10-4. Any board of education may arrange for

and maintain appropriate insurance to cover all such damages, losses and expenses.

The Law of Compromise and Settlement

The settlement of lawsuits, as a policy matter, ranks high. Nolan v. Lee Ho, 120 N.J. 465, 472 (1990). Generally, a settlement agreement is governed by principles of contract law. Thompson v. City of Atlantic City, 190 N.J. 359 (2007). Purported ambiguities in a settlement agreement must be construed against the party that drafted the agreement. Linan-Faye Construction Co., Inc. v. Housing Authority of the City of Camden, 995 F. Supp. 520 (U.S. District Court of New Jersey, 1998).

In ascertaining the meaning and scope of a settlement agreement, it is appropriate for a court to consider that courts do not rewrite contracts in order to provide a better bargain for the parties than that which was contained in their writing. Grow Company, Inc. v. Chokshi, 403 N.J. Super. 443 (App. Div. 2008), citing Christfano v. N.J. Mfgs. Ins. Co., 361 N.J. Super. 228, 237 (App. Div. 2003).

An agreement to settle a lawsuit, voluntarily entered, is binding upon the parties, whether or not made in the presence of the court, and even in the absence of a writing. Green v. John H. Lewis & Co., 436 F. 2d 389 (U.S. Court of Appeals, Third Circuit, 1970).

An oral agreement between counsel, to settle a personal injury case for \$10,000, was enforceable, where the parties and their counsel did not think that agreeing to an amount was merely an intermediate step which had no legal efficacy until settlement papers were executed. Williams v. Vito, 365 N.J. Super. 225 (Law Div. 2003).

Regardless of a party's subjective intent, his outward manifestation of his intent to be bound by signing a settlement agreement could not be undone, in the absence of fraud, mistake, duress, or some other contract defense. Nevets C.M., Inc. v. Nissho Iwai American Corp., 726 F. Supp. 525, Affirmed, Appeal of Nevets, C.M., Inc. 899 F.2d 1218.

Where the parties agree upon the essential terms of a settlement, so that the mechanics can be “fleshed out” in writing to be thereafter executed, the settlement will be enforced notwithstanding the fact that the writing does not materialize due to a party’s later renegeing. Lahue v. Pio Costa, 263 N.J. Super. 575 (App. Div. 1993); certification denied 134 N.J. 477 (1993).

Courts will not ordinarily inquire into the adequacy or inadequacy of the consideration underlying a compromise settlement which was fairly and deliberately made. And only where the inadequacy of the consideration is grossly shocking to the conscience of the court will the court interfere with a settlement agreement which was voluntarily executed by the parties. Pascarella v. Bruck, 190 N.J. Super. 118 (App. Div. 1983); certification denied, 94 N.J. 600 (1983).

There is a clear public policy in New Jersey favoring settlement of litigation, and only where there is fraud, or other compelling circumstances will a court refuse to honor a settlement agreement. Herrera v. Township of South Orange Village, 270 N.J. Super. 417 (App. Div. 1993); certification denied, 136 N.J. 28 (1993). A settlement agreement can be set aside if it was achieved through coercion, deception, fraud, undue pressure, or unseemly conduct, or if one party was not competent to voluntarily consent thereto. Peskin v. Peskin, 271 N.J. Super. 261 (App. Div. 1994); certification denied, 137 N.J. 165 (1994). A party seeking to vacate a settlement based on fraud must prove the following: (1) that there was a material misrepresentation, (2) which was made with knowledge of the falsity and with the intent that the misrepresentation be relied on, and (3) that there was actual reliance upon the misrepresentation to the party’s detriment.

The Law Governing Recoupment of Attorney Fees

Under the “American Rule”, which is followed in New Jersey, litigants must bear the cost of their own attorneys’ fees. Counsel fee awards, as exceptions to the American Rule, fall under four general categories:

- (1) those granted pursuant to a fee-shifting statute;
- (2) those allowed by court rule;

(3) a tightly circumscribed common law exception in settings involving breaches of fiduciary duties; and

(4) those granted through a contractual agreement.

In Gannett Satellite Information, LLC v. Township of Neptune, A-63 September Term 2021, 085719, the New Jersey Supreme Court declared, “[T]he American Rule remains in force.”

LEGAL ANALYSIS AND CONCLUSIONS

I **CONCLUDE** that when Piarulli filed his Notice of Claim he was not protecting any of the public’s rights. I **CONCLUDE** that when Piarulli filed his Notice of Claim he asserted a monetary claim for his own benefit.

Having found that during the February 13, 2023 teleconference the parties mutually agreed that in exchange for Piarulli’s withdrawal of his January 11, 2023 Notice of Tort Claim, Garwood BOE dismissed its February 7, 2023 Petition filed under OAL Docket Number EDU 01176-23; and having found that during the February 13, 2023 teleconference, neither Piarulli nor Garwood BOE made any reservation of rights to continue to seek attorneys’ fees and / or costs from each other; and having found that the parties’ mutual exchange (Piarulli’s withdrawal of his Notice of Tort Claim in exchange for the BOE’s dismissal of EDU 01176-23) was the parties’ complete and final expression of their desire to end all issues related to the filing of the Notice of Tort Claim and the filing of EDU 01176-23, I **CONCLUDE** that the parties there and then mutually relinquished their rights to seek attorneys’ fees and / or costs from each other.

I have found that Judge Ciarrocca’s February 2, 2023 Order, merely dissolved the temporary restraints contained in Judge Walsh’s January 20, 2023 Order, and merely dismissed Garwood’s Complaint without prejudice so that the merits of the Complaint could be decided administratively by the Commissioner of Education. I have found that the rulings contained in Judge Ciarrocca’s February 2, 2023 Order do not declare Piarulli as “winning” or “prevailing” in the matter. I have found that Piarulli is not entitled to seek attorneys’ fees and / or costs under N.J.S.A. 18A:12-20. I have found

that Piarulli is not entitled to seek attorneys' fees and / or costs based on a fee-shifting statute. I have found that Piarulli is not entitled to seek attorneys' fees and / or costs based on any court rule. I have found that Piarulli is not entitled to seek attorneys' fees and / or costs due to the breach of a fiduciary's duty. I have found that Piarulli is not entitled to seek attorneys' fees and / or costs based on a contract. I therefore **CONCLUDE** that since none of the above-referenced exceptions to the American Rule apply in this matter, the American Rule will not allow Piarulli to recover attorneys' fees (and / or costs of suit) in this matter.

Having found that N.J.S.A.18A:12-20 only obligates a Board of Education to defray costs incurred by a member when he is defending himself against a lawsuit or action brought against him by others for an act he does or for an omission he makes while he was in the course of the performance of his duties as a Board member, and having found that Piarulli's filing of his Notice of Tort Claim and subsequent contesting of Garwood BOE's Petition (EDU 01176-23) were not actions that were done in the course of the performance of Piarulli's duties as a Board member, I **CONCLUDE** that Piarulli is not entitled to be indemnified for his attorneys' fees and / or costs based on N.J.S.A. 18A:12-20 or on any other basis.

ORDER

Pursuant to the foregoing conclusions, it is hereby **ORDERED** that the Petition filed by Piarulli on June 6, 2023 is hereby **DISMISSED** with prejudice; and it is further

ORDERED that this **ORDER** shall be served upon the parties via email and said parties shall acknowledge receipt of said **ORDER** within seven (7) days.

I hereby **FILE** this initial decision with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION** for consideration.

This recommended decision may be adopted, modified, or rejected by the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION**, who by law is authorized to make a final decision in this matter. If the Commissioner of the Department of

Education does not adopt, modify, or reject this decision within forty-five days and unless such time limit is otherwise extended, this recommended decision shall become a final decision in accordance with N.J.S.A. 52:14B-10.

Within thirteen days from the date on which this recommended decision was mailed to the parties, any party may file written exceptions with the **COMMISSIONER OF THE DEPARTMENT OF EDUCATION, ATTN: BUREAU OF CONTROVERSIES AND DISPUTES, 100 Riverview Plaza, 4th Floor, PO Box 500, Trenton, New Jersey 08625-0500**, marked "Attention: Exceptions." A copy of any exceptions must be sent to the judge and to the other parties.

A handwritten signature in black ink, reading "John P. Scollo", enclosed in a thin yellow rectangular border.

December 21, 2023
DATE

JOHN P. SCOLLO, ALJ

Date Received at Agency: _____

Date Mailed to Parties: _____

db